

### Article 3.

#### Natural and Scenic Rivers System.

##### **§ 113A-30. Short title.**

This Article shall be known and may be cited as the "Natural and Scenic Rivers Act of 1971." (1971, c. 1167, s. 2.)

##### **§ 113A-31. Declaration of policy.**

The General Assembly finds that certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife, scientific and cultural values of great present and future benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the State's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose. (1971, c. 1167, s. 2.)

##### **§ 113A-32. Declaration of purpose.**

The purpose of this Article is to implement the policy as set out in G.S. 113A-31 by instituting a North Carolina natural and scenic rivers system, and by prescribing methods for inclusion of components to the system from time to time. (1971, c. 1167, s. 2.)

##### **§ 113A-33. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Department" means the Department of Environment and Natural Resources.
- (2) "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the North Carolina natural and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the system.
- (3) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.
- (4) "Road" means public or private highway, hard-surface road, dirt road, or railroad.
- (5) "Scenic easement" means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it.
- (6) "Secretary" means the Secretary of Environment and Natural Resources. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 122; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a).)

#### **§ 113A-34. Types of scenic rivers.**

The following types of rivers are eligible for inclusion in the North Carolina natural and scenic rivers system:

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads.

Class III. Recreational river areas. Those rivers or segments of rivers that offer outstanding recreation and scenic values and that are largely free of impoundments. They may have some development along their shorelines and have more extensive public access than natural or scenic river segments. Recreational river segments may also link two or more natural and/or scenic river segments to provide a contiguous designated river area. No provision of this section shall interfere with flood control measures; provided that recreational river users can continue to travel the river. (1971, c. 1167, s. 2; 1989, c. 752, s. 156(a).)

#### **§ 113A-35. Criteria for system.**

For the inclusion of any river or segment of river in the natural and scenic river system, the following criteria must be present:

- (1) River segment length – must be no less than one mile.
- (2) Boundaries – of the system shall be the visual horizon or such distance from each shoreline as may be determined to be necessary by the Secretary, but shall not be less than 20 feet.
- (3) Water quality – shall not be less than that required for Class "C" waters as established by the North Carolina Environmental Management Commission.
- (4) Water flow – shall be sufficient to assure a continuous flow and shall not be subjected to withdrawal or regulation to the extent of substantially altering the natural ecology of the stream.
- (5) Public access – shall be limited, but may be permitted to the extent deemed proper by the Secretary, and in keeping with the property interest acquired by the Department and the purpose of this Article. (1971, c. 1167, s. 2; 1973, c. 1262, ss. 23, 86; 1989, c. 654, s. 1.)

#### **§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.**

(a) That segment of the south fork of the New River extending from its confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany Counties to its confluence with the north fork of the New River and the main fork of the New River in Ashe and Alleghany Counties downstream to the Virginia State line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System.

The Department shall prepare and implement a management plan for this river section. This management plan shall recognize and provide for the protection of the existing undeveloped scenic and pastoral features of the river. Furthermore, it shall specifically provide for continued use of the lands adjacent to the river for normal agricultural activities, including, but not limited to, cultivation of crops, raising of cattle, growing of trees and other practices necessary to these agricultural pursuits.

For purposes of implementing this section and the management plan, the Department may acquire lands or interests in lands, provide for protection of scenic values as described in G.S. 113A-38, and provide for public access. Easements obtained for the purpose of implementing this section and the management plan shall not abridge the water rights being exercised on May 26, 1975.

Should the Governor seek inclusion of this river segment in the National System of Wild and Scenic Rivers by action of the Secretary of Interior, such inclusion shall be at no cost to the federal government, as prescribed in the National Wild and Scenic Rivers Act, and therefore shall be under the terms described in this section of the North Carolina Wild and Scenic Rivers Act and in the management plan developed pursuant thereto.

(b) The Department shall prepare an annual status report on the progress made in implementing the management plan required pursuant to subsection (a) of this section and the progress in implementing the management plan submitted by the Department in support of the request to the Secretary of the Interior for the river's inclusion in the National System of Wild and Scenic Rivers. The status report shall evaluate the extent to which current implementation of the management plans has in fact maintained the river's free-flowing state and protected the scenic conditions of the river and the adjacent lands consistent with the purpose of this Article. If implementation of either management plan is incomplete at the time the report is filed, the Secretary shall submit a schedule for implementing the remainder of the plan. The status report shall be filed with the General Assembly no later than January 15 of each year, beginning in 1990. (1973, c. 879; 1975, c. 404; 1977, c. 555; c. 771, s. 4; 1985, c. 129, s. 3; 1987, c. 827, s. 127; 1989, c. 654, s. 2; c. 765; 1999-147, s. 1.)

#### **§ 113A-35.2. Additional components.**

That segment of the Linville River beginning at the State Highway 183 bridge over the Linville River and extending approximately 13 miles downstream to the boundary between the United States Forest Service lands and lands of Duke Power Company (latitude 35° 50' 20") shall be a natural river area and shall be included in the North Carolina Natural and Scenic River System.

That segment of the Horsepasture River in Transylvania County extending downstream from Bohaynee Road (N.C. 281) to Lake Jocassee shall be a natural river and shall be included in the North Carolina Natural and Scenic Rivers System.

That segment of the Lumber River extending from county road 1412 in Scotland County downstream to the North Carolina-South Carolina state line, a distance of approximately 102 river miles, shall be included in the Natural and Scenic Rivers System and classified as follows: from county road 1412 in Scotland County downstream to the junction of the Lumber River and Back Swamp shall be classified as scenic; from the junction of the Lumber River and Back Swamp downstream to the junction of the Lumber River and Jacob Branch and the river within the Fair Bluff town limits shall be classified as recreational; and from the junction of the Lumber River and Jacob Branch downstream to the North Carolina-South Carolina state line, excepting the Fair Bluff town limits, shall be classified as natural. (1975, c. 698; 1985, c. 344, s. 1; 1989, c. 752, s. 156(b).)

#### **§ 113A-36. Administrative agency; federal grants; additions to the system; regulations.**

(a) The Department is the agency of the State of North Carolina with the duties and responsibilities to administer and control the North Carolina natural and scenic rivers system.

(b) The Department shall be the agency of the State with the authority to accept federal grants of assistance in planning, developing (which would include the acquisition of land or an interest in land), and administering the natural and scenic rivers system.

(c) The Secretary of the Department shall study and from time to time submit to the Governor and to the General Assembly proposals for the additions to the system of rivers and

segments of rivers which, in his judgment, fall within one or more of the categories set out in G.S. 113A-34. Each proposal shall specify the category of the proposed addition and shall be accompanied by a detailed report of the facts which, in the Secretary's judgment, makes the area a worthy addition to the system.

Before submitting any proposal to the Governor or the General Assembly for the addition to the system of a river or segment of a river, the Secretary or his authorized representative, shall hold a public hearing in the county or counties where said river or segment of river is situated. Notice of such public hearing shall be given by publishing a notice once each week for two consecutive weeks in a newspaper having general circulation in the county where said hearing is to be held, the second of said notices appearing not less than 10 days before said hearing. Any person attending said hearing shall be given an opportunity to be heard. Notwithstanding the provisions of the foregoing, no public hearing shall be required with respect to a river bounded solely by the property of one owner, who consents in writing to the addition of such river to the system.

The Department shall also conduct an investigation on the feasibility of the inclusion of a river or a segment of river within the system and file a written report with the Governor when submitting a proposal.

The Department shall also, before submitting such a proposal to the Governor or the General Assembly, notify in writing the owner, lessee, or tenant of any lands adjoining said river or segment of river of its intention to make such proposal. In the event the Department, after due diligence, is unable to determine the owner or lessee of any such land, the Department may publish a notice for four successive weeks in a newspaper having general circulation in the county where the land is situated of its intention to make a proposal to the Governor or General Assembly for the addition of a river or segment of river to the system.

(c1) Upon receipt of a request in the form of a resolution from the commissioners of the county or counties in which a river segment is located and upon studying the segment and determining that it meets the criteria set forth in G.S. 113A-35, the Secretary may designate the segment a potential component of the natural and scenic rivers system. The designation as a potential component shall be transmitted to the Governor and all appropriate State agencies. Any segment so designated is subject to the provisions of this Article applicable to designated rivers, except for acquisition by condemnation or otherwise, and to any rules adopted pursuant to this Article. The Secretary shall make a full report and, if appropriate, a proposal for an addition to the natural and scenic rivers system to the General Assembly within 90 days after the convening of the next session following issuance of the designation, and the General Assembly shall determine whether to designate the segment as a component of the natural and scenic rivers system. If the next session of the General Assembly fails to take affirmative action on the designation, the designation as a potential component shall expire.

(d) The Department may adopt rules to implement this Article. (1971, c. 1167, s. 2; 1973, c. 911; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1985, c. 129, s. 1; 1987, c. 827, ss. 125, 128; 1989, c. 727, s. 123.)

#### **§ 113A-37. Raising the status of an area.**

Whenever in the judgment of the Secretary of the Department a scenic river segment has been sufficiently restored and enhanced in its natural scenic and recreational qualities, such segment may be reclassified with the approval of the Department, to a natural river area status and thereafter administered accordingly. (1971, c. 1167, s. 2; 1973, c. 1262, ss. 28, 86.)

#### **§ 113A-38. Land acquisition.**

(a) The Department of Administration is authorized to acquire for the Department, within the boundaries of a river or segment of river as set out in G.S. 113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in land, preferably "scenic

easements." Acquisition of land or interest therein may be by donation, purchase with donated or appropriated funds, exchange or otherwise.

(b) The Department of Administration in acquiring real property or a property interest therein as set out in this Article shall have and may exercise the power of eminent domain in accordance with Article 3 of Chapter 40A of the General Statutes. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, ss. 127, 129.)

**§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of easement.**

The contribution or donation of a "scenic easement," right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this Article, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and section 170(c)(1) of the Internal Revenue Code. The value of the contribution or donation shall be the fair market value of the easement or other interest in land when the contribution or donation is made. (1971, c. 1167, s. 2; 1991, c. 45, s. 23.)

**§ 113A-40. Component as part of State park, wildlife refuge, etc.**

Any component of the State natural and scenic rivers system that is or shall become a part of any State park, wildlife refuge, or state-owned area shall be subject to the provisions of this Article and the Articles under which the other areas may be administered, and in the case of conflict between the provisions of these Articles the more restrictive provisions shall apply. (1971, c. 1167, s. 2.)

**§ 113A-41. Component as part of national wild and scenic river system.**

Nothing in this Article shall preclude a river or segment of a river from becoming part of the national wild and scenic river system. The Secretary of the Department is directed to encourage and assist any federal studies for the inclusion of North Carolina rivers in the national system. The Secretary may enter into cooperative agreements for joint federal-state administration of a North Carolina river or segment of river: Provided, that such agreements relating to water and land use are not less restrictive than the requirements of this Article. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86.)

**§ 113A-42. Violations.**

(a) Civil Action. – Whoever violates, fails, neglects or refuses to obey any provision of this Article or rule or order of the Secretary may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties. – Whoever violates, fails, neglects or refuses to obey any provision of this Article or rule or order of the Secretary is guilty of a Class 3 misdemeanor and may be punished only by a fine of not more than fifty dollars (\$50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 827, s. 125; 1989, c. 727, s. 124; 1993, c. 539, s. 872; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 113A-43. Authorization of advances.**

The Department of Administration is hereby authorized to advance from land-purchase appropriations necessary amounts for the purchase of land in those cases where reimbursement will be later effected by the Bureau of Outdoor Recreation of the United States Department of the Interior. (1971, c. 1167, s. 2.)

**§ 113A-44. Restrictions on project works on natural or scenic river.**

The State Utilities Commission may not permit the construction of any dam, water conduit, reservoir, powerhouse transmission line, or any other project works on or directly affecting any river that is designated as a component or potential component of the State Natural and Scenic Rivers System. No department or agency of the State may assist by loan, grant, license, permit, or otherwise in the construction of any water resources project that would have a direct and adverse effect on any river that is designated as a component or potential component of the State Natural and Scenic Rivers System. This section shall not, however, preclude licensing of or assistance to a development below or above a designated or potential component. No department or agency of the State may recommend authorization of any water resources project that would have a direct and adverse effect on any river that is designated as a component or potential component of the State Natural and Scenic Rivers System, or request appropriations to begin construction of any such project, regardless of when authorized, without advising the Secretary in writing of its intention to do so at least 60 days in advance. Such department or agency making such recommendation or request shall submit a written impact statement to the General Assembly to accompany the recommendation or request specifically describing how construction of the project would be in conflict with the purposes of this act and how it would affect the component or potential component. (1985, c. 129, s. 2.)

**§§ 113A-45 through 113A-49. Reserved for future codification purposes.**